

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Tan	Team: Team # 3	CCRB Case #: 200203680	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 05/23/2002 7:45 PM	Location of Incident: § 87(2)(b) apartment #§ 87(2)(b)	Precinct: 52	18 Mo. SOL 11/23/2003	EO SOL 11/23/2003	
Date/Time CV Reported Thu, 05/23/2002 7:45 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/04/2002 8:55 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Kelly	23827	924018	052 PCT
2. SGT Brian Mullen	02320	906885	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Edward Griffith	10788	888792	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Mullen	Abuse: Sgt. Brian Mullen entered § 87(2)(b) apartment § 87(2)(b)	§ 87(2)(b)
B.POM Robert Kelly	Abuse: PO Robert Kelly entered § 87(2)(b) apartment § 87(2)(b)	§ 87(2)(b)
C.POM Robert Kelly	Discourtesy: PO Robert Kelly spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
D.SGT Brian Mullen	Discourtesy: Sgt. Brian Mullen spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
E.SGT Brian Mullen	Force: Sgt. Brian Mullen used physical force against § 87(2)(b)	§ 87(2)(b)
F.POM Robert Kelly	Force: PO Robert Kelly used physical force against § 87(2)(b)	§ 87(2)(b)
G.SGT Brian Mullen	Force: Sgt. Brian Mullen tightly handcuffed § 87(2)(b)	§ 87(2)(b)

### Synopsis

§ 87(2)(b) filed this complaint with IAB on May 23, 2002. The case was referred to the CCRB on June 4, 2002. § 87(2)(b) stated that on May 23, 2002, a social worker identified by the CCRB as § 87(2)(b) accompanied by two officers (identified by the CCRB as PO Robert Kelly and Sgt. Brian Mullen [Sgt. Mullen was a Police Officer when this incident occurred. He has since been promoted to the rank of Sergeant and will be referred to as such throughout this report.]) to remove § 87(2)(b)-old § 87(2)(b) § 87(2)(b) allowed § 87(2)(b) to enter the apartment, but vehemently refused the officers entry. § 87(2)(b) alleged that Sgt. Mullen and PO Kelly cursed at him, threw him to the floor and tightly handcuffed him, thereby causing injuries to his wrists. § 87(2)(b) also sustained injuries to his neck and right shoulder. § 87(2)(b) was arrested and charged § 87(2)(b)

This case is not eligible for mediation because § 87(2)(b) was arrested and sustained injuries.

§ 87(2)(g)

This case was reassigned to Inv. Michael Tan on June 23, 2003.

### Summary of Complaint

§ 87(2)(b) § 87(2)(b) was interviewed by IAB on May 23, 2002. [encl. 7] § 87(2)(g) [encl. 8]

§ 87(2)(b) stated that on May 23, 2002, at approximately 7:45 PM, he and his son § 87(2)(b) § 87(2)(b) – were watching a videotape on the television in their apartment. § 87(2)(b) answered a knock at the door to find § 87(2)(b) a social worker, together with PO Kelly and PO Mullen. § 87(2)(b) asked the two officers, “Can I help you?” The officers said they were accompanying the social worker. § 87(2)(b) addressed § 87(2)(b) who explained that he had come to collect § 87(2)(b) § 87(2)(b) old nephew and foster child, § 87(2)(b) § 87(2)(b) due to allegations that § 87(2)(b) was ‘beating up on him.’ § 87(2)(b) welcomed § 87(2)(b) into his apartment and proceeded to close the door. The officers pushed the door open before he could close it and § 87(2)(b) said, “There is no aggression going on here, and I didn’t invite you in – why are you coming into my house?” The officers replied, “We want to come in.” § 87(2)(b) responded, “I’m not letting you into my house because I didn’t invite you into my house. Maybe if you had asked in a decent manner I would have let you in.” The officers said, “We’re coming in anyway.” § 87(2)(b) was standing next to § 87(2)(b)

PO Mullen put his hand on § 87(2)(b) s chest and pushed him back approximately six feet into the kitchen doorway. § 87(2)(b) attempted to sneak past § 87(2)(b) and the officers to leave the apartment. § 87(2)(b) told § 87(2)(b) “Tell the officers there’s no aggression going on here and that I’ll let you take the kid and they can wait outside.” The officers then informed § 87(2)(b) that it was their job to enter the apartment to assist § 87(2)(b). § 87(2)(b) said, “Fine. Okay, but stay right here by the kitchen door because if the kid sees you, he’s § 87(2)(b) old, he’s been through this before, if he sees it again he’ll start going crazy. So let me go inside, get him dressed and talk to him.” § 87(2)(b) turned to help § 87(2)(b)

get § 87(2)(b). The officers followed. § 87(2)(b) stopped and said, "Listen, you guys are acting like morons. This is a § 87(2)(b) old child I have to get out of this house and you guys are not making it any better." PO Kelly told § 87(2)(b) "Shut the fuck up!" § 87(2)(b) did not make any discourtesy allegations to IAB.] § 87(2)(b) responded, "Why don't you shut the fuck up?" At which point, § 87(2)(b) echoed, "Yeah, why don't you shut the fuck up!" § 87(2)(b) admonished his son to be respectful to the officers.

PO Kelly grabbed § 87(2)(b) by the back of his shirt, while PO Mullen held him by the back of his neck. Together they threw him to the ground face down. § 87(2)(b) fell onto his arms. PO Mullen was on top of § 87(2)(b) and punched him in the back of the neck. Since he had fallen on his arms, the officers started to grab them out from under § 87(2)(b) claiming that he was resisting arrest. § 87(2)(b) responded by putting his arms on his back and said, "No, I'm not resisting arrest." PO Mullen put handcuffs on § 87(2)(b) and § 87(2)(b) said, "That's too tight." PO Mullen responded, "That's too bad," and squeezed them tighter. § 87(2)(b) did not make this statement to IAB. He merely stated that the handcuffs were tight and caused pain. He did not say that they were re-tightened.] § 87(2)(b) then informed the officers that he had a shoulder problem, but PO Mullen said, "I don't give a fuck." Both officers pulled him off the floor by his arms, wrenching his shoulder. PO Mullen escorted § 87(2)(b) out of his apartment and down the stairs with PO Kelly following behind. PO Mullen intentionally and aggressively pushed § 87(2)(b)'s upper body and face into the wall of the stairwell twice and into the front door of the building once.

### Results of Investigation

§ 87(2)(b) § 87(2)(b) a § 87(2)(b)-old white male, was interviewed at the CCRB on June 13, 2002. [encl. 9]

On May 23, 2002, at approximately 7:45pm, "§ 87(2)(b) and his father, § 87(2)(b) were in the living room of their apartment watching a video. Both § 87(2)(b) and § 87(2)(b) got up when a knock was heard at the front door. From where he stood, § 87(2)(b) could see the front door as § 87(2)(b) opened it. Outside the door stood a social worker [identified by the CCRB as § 87(2)(b) and two police officers [identified by the CCRB as PO Kelly and Sgt. Mullen].

§ 87(2)(b) said, "We're here for § 87(2)(b) to which § 87(2)(b) replied, "Come on in and get § 87(2)(b) § 87(2)(b) also stated he wanted to prepare some clothing for § 87(2)(b) before he left with § 87(2)(b) § 87(2)(b) attempted to close the door behind him (thereby allowing only § 87(2)(b) into the apartment), but one of the officers shoved open the door. § 87(2)(b) informed that officer that there was no problem, and that the officers could wait outside until § 87(2)(b) was ready. § 87(2)(b) also informed the officers that if anything occurred, they could enter the residence.

§ 87(2)(b) attempted again to go back into his apartment unaccompanied by the officers, but they followed him into the hallway. § 87(2)(b) asked the officers why they were entering the apartment uninvited, and informed them that they could stand by the kitchen and enter if anything occurred, but Sgt. Mullen shoved him. § 87(2)(b) asked his son, "§ 87(2)(b) you see what's going on?" To which § 87(2)(b) interjected, "You motherfucker." § 87(2)(b) told his son to watch his mouth. § 87(2)(b) told Sgt. Mullen, "You guys are morons. You don't understand," to which the officers replied, "Shut the fuck up." § 87(2)(b) replied that he would not, and said, "Why don't you shut the fuck up?" § 87(2)(b) then turned to assist § 87(2)(b) but Sgt. Mullen grabbed § 87(2)(b) by the neck, and PO Kelly slammed him to the floor, and put his knee on § 87(2)(b)'s back. Sgt. Mullen then hit § 87(2)(b). § 87(2)(b) asked Sgt. Mullen, "Why the fuck you hit me?" Sgt. Mullen replied, "Shut the fuck up. I don't give a fuck," and handcuffed § 87(2)(b). § 87(2)(b) informed the officers that the handcuffs hurt his wrist, but the officers put the handcuffs on tighter. § 87(2)(b) asked that the officers not lift him by his arms, but they lifted him by his arms and dragged him out of the apartment. As they were exiting, the police officers informed § 87(2)(b) that they had a right to enter the residence with § 87(2)(b).

At some point during the encounter, § 87(2)(b) exited the residence and held the door shut. As § 87(2)(b) was getting arrested, § 87(2)(b) left with § 87(2)(b). § 87(2)(b) was still inside, trying to leave unsuccessfully, as § 87(2)(b) was still holding the door shut. § 87(2)(b) then climbed up the fire escape, climbed onto the roof, and exited out the roof's door. § 87(2)(b) was walking down the stairs with § 87(2)(b). § 87(2)(b) grabbed § 87(2)(b) by his legs and attempted to stop § 87(2)(b) from taking § 87(2)(b). At one point, § 87(2)(b) "had" § 87(2)(b).

and gave him to his friend, § 87(2)(b) who took § 87(2)(b) inside. § 87(2)(b) told another of § 87(2)(b) friends to call IAB. § 87(2)(b) began running to get his mother at the park, but was stopped halfway by the police officers. The officers asked § 87(2)(b) why he was running, to which § 87(2)(b) did not reply. The officers drove § 87(2)(b) back to the apartment. § 87(2)(b) saw both § 87(2)(b) and § 87(2)(b) in the car, and saw that § 87(2)(b) was giving § 87(2)(b) “a hard time.”

§ 87(2)(b), a § 87(2)(b)-old high school student, was interviewed by the CCRB via telephone on May 23, 2003. [encl. 10] He and his mother made very clear that § 87(2)(b) is not willing to participate any further in the investigation.

§ 87(2)(b) lives in § 87(2)(b) across the hall from § 87(2)(b)'s old apartment. His family is friendly with the § 87(2)(b). § 87(2)(b) stated that he heard a racket in the evening of May 23, 2002. He stated that he often heard arguing coming from the § 87(2)(b) apartment; he would pass by to make sure everything was all right because children are in the house. That night, he saw two police officers, PO Kelly and Sgt. Mullen, at the apartment. The door was open and they were inside talking to § 87(2)(b). § 87(2)(b) was telling the officers to get out, that they had no right to be in the apartment without a warrant. § 87(2)(b) figured that everything was okay, because he had seen the police at § 87(2)(b)'s apartment frequently and the situation seemed to be under control. § 87(2)(b) went back to his apartment and shut the door. A few minutes later, he heard a commotion and went into the hallway. He saw PO Kelly and Sgt. Mullen “wrestle § 87(2)(b) to the floor.” One of the officers had his knee in § 87(2)(b)'s back and was pulling his arm back in order to put it in handcuffs. § 87(2)(b) was pulling his arm away from the officer. § 87(2)(b) yelled, “You’re breaking my arm!” The officers yelled at him to “shut up.” The officers handcuffed him. § 87(2)(b) called to § 87(2)(b) that “this is bullshit.” § 87(2)(b) asked § 87(2)(b) to call a hotline and report police brutality. § 87(2)(b) continued to ask the officers why he was being arrested. The officers did not answer him. § 87(2)(b) did not see a social worker at the scene.

§ 87(2)(b) stated that the officer who put his knee in § 87(2)(b)'s back seemed to be using more force than the other did. § 87(2)(b) could not describe this officer, however. He only recalled that the officers were light-skinned, either white or Hispanic, and wearing uniforms. He only saw two officers interact with § 87(2)(b) on that date.

§ 87(2)(b) was interviewed by the CCRB on June 27, 2003. [encl. 11]

§ 87(2)(b) is a social worker at § 87(2)(b). § 87(2)(b)'s duties include removing children from dangerous situations, as mandated by the courts.

On § 87(2)(b), § 87(2)(b) went to court and was ordered to remove a child residing at § 87(2)(b) apartment § 87(2)(b) in the Bronx. Once § 87(2)(b) arrived at that location, he called the 52<sup>nd</sup> Precinct to request a police escort. § 87(2)(b) said that it is standard procedure to have a police escort during removals, because it is a potentially explosive situation. Two officers arrived at the location (identified by the CCRB as PO Robert Kelly and Sgt. Brian Mullen) and escorted § 87(2)(b) to apartment § 87(2)(b). § 87(2)(b) knocked on the door and § 87(2)(b) answered. § 87(2)(b) identified himself and informed § 87(2)(b) that he was mandated by the Bronx Family Court to remove a child from that location. § 87(2)(b) said, “Okay. Yeah. Go ahead. Remove the child, but why are you here with cops?” § 87(2)(b) explained to § 87(2)(b) that the officers were required to be there with him and that it was standard procedure. § 87(2)(b) said, “They [the officers] can’t come into my home.” § 87(2)(b) started to walk further into his apartment and began cursing at the officers. § 87(2)(b) unleashed a barrage of profanity toward the officers. § 87(2)(b) spoke to the officers, who were standing behind § 87(2)(b) and said, “Officers, I’m sorry you have to come with me.” The officers responded, “Okay, yeah, go ahead.” § 87(2)(b) said, “Get out of my house you pig! You can’t come into my house.” The officers responded, “Excuse me, you have to cooperate. You have to calm down. Calm down. Please calm down.” § 87(2)(b) replied, “No way, you can’t come here.” The officers told § 87(2)(b) “You have to calm down. This gentleman § 87(2)(b) has to go there [and remove the child]. We can do it very quietly, or we can do it the way you want it. Because the way we can do it very quietly is to let this gentleman go in there, get

this child, get the child's stuff. Because we are not working for ourselves or himself. We are working by the order [of the court]. Please, if you can, please let him go and get this child and get his belongings and we will leave here." § 87(2)(b) then went "berserk" and said, "No, no, no, no, no. He can come here; he's the social worker. But he can not come here with the cops." The officers told § 87(2)(b) "If you're acting [inaudible on tape] we're going to have to arrest you." § 87(2)(b) responded, "I don't care" and unleashed another barrage of profanities. The officers then told § 87(2)(b) to go and remove the child. § 87(2)(b) started to walk into the apartment, followed closely by the officers. § 87(2)(b) walked past § 87(2)(b) and pushed one of the officers [identified by the CCRB as Sgt. Mullen] in the chest with both of his hands. Both officers grabbed § 87(2)(b) by the arms and attempted to place his hands behind his back. During the "scuffle," the officers and § 87(2)(b) fell to the ground. § 87(2)(b) became scared of the situation and moved back toward the door. § 87(2)(b) stated that it was not easy for the officers to place § 87(2)(b)'s hands behind his back. § 87(2)(b) stated that § 87(2)(b) "was fighting like a bull. He was really strong." After approximately fifteen minutes, the officers managed to handcuff § 87(2)(b). When asked if § 87(2)(b) calmed down after he was handcuffed, § 87(2)(b) responded, "Oh, Lord have mercy. No he did not." § 87(2)(b) cursed at the officers and said, "I'm going to get you. I'll get you. I'll sue you." During the scuffle, the officers had called for backup. By this time, other officers had responded to the scene. § 87(2)(b) said that PO Kelly's and Sgt. Mullen's lives had been in danger prior to handcuffing § 87(2)(b). § 87(2)(b) was scared that § 87(2)(b) might have grabbed one of the officers' guns. PO Kelly and Sgt. Mullen then escorted § 87(2)(b) out of the building and placed him into a patrol car. § 87(2)(b) followed closely behind the officers and § 87(2)(b) as he was being escorted out. § 87(2)(b) said that § 87(2)(b) was not slammed against the walls or door as he was being escorted out. Once, § 87(2)(b) was placed into the patrol car, § 87(2)(b) informed the officers that he never removed the child from the location. Several officers, one of which was possibly a captain, accompanied § 87(2)(b) back into the building to look for the child. § 87(2)(b) searched § 87(2)(b)'s apartment, but could not find the child. Someone informed § 87(2)(b) that a neighbor had taken the child to another apartment. The officers began knocking on a neighbor's door and said that they had reason to believe that the child was inside. The neighbor denied that the child was inside. § 87(2)(b) said, "I was told by somebody that...I have compelling reason that the child is in that room. Please, you have to let the officers get the child." The neighbor allowed the officers to enter the apartment. The officers found the child inside of a closet.

§ 87(2)(b) stated that the officers did not strike § 87(2)(b) at any point during this incident. When asked if any officer used profanity, § 87(2)(b) responded, "No way, never. I can swear any time, no hitting, no spanking. If there was anybody who was really out of tune, it was § 87(2)(b). Never." § 87(2)(b) did not see any injuries on § 87(2)(b). § 87(2)(b) did not complain of any injury. § 87(2)(b) said of PO Kelly and Sgt. Mullen, "The officers were exceptional. They were very professional. There was no misconduct. There was no profanity used by them...They were very good."

§ 87(2)(b) said that when he entered § 87(2)(b)'s apartment, he saw § 87(2)(b)'s son. § 87(2)(b)'s son left the apartment through the fire escape as soon as the scuffle began. § 87(2)(b)'s son was not present when the officers handcuffed § 87(2)(b).

### **PO Robert Kelly**

PO Robert Kelly was interviewed at the CCRB on January 30, 2003. [encl. 13]

On May 23, 2002, PO Robert Kelly was working a 1500X2335 tour. He was in uniform and worked with Sgt. Mullen. They were assigned to sector C.

PO Kelly remembered that he and Sgt. Mullen received a "10-10", or call for help for § 87(2)(b) from a social worker. When they responded to the location, they met § 87(2)(b) a caseworker for the § 87(2)(b). § 87(2)(b) told them that he needed to remove a child from the location and he was concerned about his safety. PO Kelly stated accompanying social workers on such assignments is standard procedure because parents are sometimes violent. When they went to the apartment, § 87(2)(b) answered the door. § 87(2)(b) explained that he was there to remove a child and § 87(2)(b) appeared to accept this. § 87(2)(b) asked why the police were there and they explained that they were required to be there to ensure the caseworker's safety. § 87(2)(b) let § 87(2)(b) inside, but tried to close the door "in the officers' faces." PO Kelly and Sgt. Mullen held the door open and explained

again that they had to come inside. § 87(2)(b) became upset and shouted, “Who the fuck do you guys think you are? You need a warrant!” His son, who appeared to be seven or eight years old, swore at them also. They explained again that they were there for the caseworker’s safety. They entered the apartment and walked down the hall. The front door was left open and § 87(2)(b) shouted to neighbors responding to the noise, “Call IAB! The police are abusing their authority!” § 87(2)(b) continued to be “in [their] face[s]” and “took a swing” at Sgt. Mullen and pushed him. Sgt. Mullen and PO Kelly grabbed his arms and they all fell down because § 87(2)(b) resisted. § 87(2)(b) resisted them, refusing to be handcuffed. He put his hands in front of his stomach. His neighbors had started to come into the hallway, responding to his shouting. Finally, the officers succeeded in handcuffing the complainant, by putting their arms around him in a bear hug. Then § 87(2)(b) refused to stand up, and continued to “curse and scream.” Sgt. Mullen and PO Kelly pulled him by his upper arms to a standing position and tried to walk him out to their patrol car. § 87(2)(b) continued to resist by refusing to walk and “dragging his feet.” During the struggle, § 87(2)(b) moved toward the door as a safety maneuver, but continued to observe the struggle. Neighbors came out of their apartments and started to shout at the police. They called for backup and other uniformed officers from the precinct responded. Finally, § 87(2)(b) was put into the back seat of the patrol car. The backup officers helped with crowd control because the neighbors were very upset. PO Kelly could not remember which other units responded. He did recall that PO Griffith was outside. When § 87(2)(b) was taken outside, his son jumped out of the window and ran down the street; several officers took off after him.

§ 87(2)(b) was escorted to the precinct. PO Kelly stated that the only time § 87(2)(b) complained that his handcuffs were too tight was when they arrived at the precinct. PO Kelly loosened § 87(2)(b)’s handcuffs and after putting him in a prisoner cell, his handcuffs were removed. § 87(2)(b) explained that he was in pain because a previous shoulder injury had been exacerbated by the struggle. He requested medical attention, so PO Kelly escorted § 87(2)(b) in an ambulance to § 87(2)(b) at approximately § 87(2)(b). PO Kelly put handcuffs on the complainant again for the transport. PO Kelly recalled that the complainant had red marks on his arms from wrestling as well as marks from the handcuffs. He did not notice any scratches on § 87(2)(b). When asked how § 87(2)(b) might have sustained scratches on his neck, PO Kelly answered, “possibly during the struggle.” He did not recall putting his hands on § 87(2)(b)’s neck at any point. PO Kelly stayed with § 87(2)(b) at the hospital. At one point, § 87(2)(b) began to cry and say, “I don’t know why I did this.” IAB came to interview § 87(2)(b) at the hospital. After § 87(2)(b) was treated, PO Kelly brought him back to the precinct so his arrest could be processed.

PO Kelly denied ever throwing § 87(2)(b) to the ground, facedown. He denied that he and his partner bumped § 87(2)(b) into the walls intentionally. He denied ever responding to § 87(2)(b)’s profanity with discourtesy. He stated that § 87(2)(b) never offered any reason for his refusal to allow officers into his apartment.

PO Kelly indicated that the civil and criminal trials surrounding this incident are still pending. He also stated that his partner, Sgt. Mullen, was injured during the struggle to handcuff § 87(2)(b). His finger was jammed, and he missed work as a result of this injury.

#### **Sgt. Brian Mullen**

Sgt. Brian Mullen was interviewed at the CCRB on May 22, 2003. [encl. 15]

On May 23, 2002, Sgt. Brian Mullen worked a 1500X2335 tour. He was in uniform and worked with PO Kelly. They were assigned to sector C.

At approximately 6:10pm, Sgt. Mullen and PO Kelly were dispatched to § 87(2)(b) to assist a social worker, § 87(2)(b) in removing a child from § 87(2)(b)’s household. Sgt. Mullen stated that accompanying social workers on such assignments is standard procedure. § 87(2)(b) did not indicate that he had had a negative interaction with § 87(2)(b) previously. Sgt. Mullen mentioned that the child was being taken because of neglect. Sgt. Mullen and PO Kelly accompanied § 87(2)(b) to § 87(2)(b)’s apartment.

When § 87(2)(b) answered the door, he was immediately “irate” and directed his anger against the officers, not § 87(2)(b). § 87(2)(b) swore at the officers repeatedly. He seemed angry that officers had responded to his apartment. Sgt. Mullen recalled that a boy, “§ 87(2)(b)” was present, but he did not interact with the officers. Sgt. Mullen stated that he and PO Kelly remained by the front door throughout the incident. He stated that they entered the front hall, but did not venture further into the apartment. § 87(2)(b) was unable to proceed further into the apartment because of § 87(2)(b)’s behavior. At no point did § 87(2)(b) ask them to wait while he brought out the child. After swearing at the officers for five to ten minutes, § 87(2)(b) pushed Sgt. Mullen up against the wall near the front door. He pushed with hands on Sgt. Mullen’s chest. Sgt. Mullen pulled him onto the ground by his shoulders where he was handcuffed after a brief struggle. § 87(2)(b) was flailing his arms and legs. PO Kelly assisted Sgt. Mullen in grabbing § 87(2)(b)’s arms so he could be handcuffed. At some point during the struggle, Sgt. Mullen sprained his right wrist. He also had cuts on his hand from the handcuffs. He could not say how exactly this occurred. [Sgt. Mullen went Line of Duty § 87(2)(b) § 87(2)(b) ran out of the apartment at that point. Sgt. Mullen and PO Kelly pulled § 87(2)(b) up by his arms and walked him out of the building. He did not complain of any discomfort at that time. At some point during this incident, Sgt. Mullen had called for backup. As Sgt. Mullen and PO Kelly were escorting § 87(2)(b) out of the building, Lt. Gallagher responded to the scene to verify the arrest. Sgt. Mullen could not remember how many other officers responded. Sgt. Mullen recalled that other residents of the building were outside and in the hallways, but they were relatively calm. After § 87(2)(b) was arrested, Sgt. Mullen went back upstairs with § 87(2)(b) and found the neglected child in a neighbor’s apartment. Sgt. Mullen did not know if he was in the apartment all along or if he went to the neighbor’s after § 87(2)(b) was arrested. The child was removed without further incident.]

After § 87(2)(b) was brought to the precinct, he complained of pain to his shoulder. He did not mention any shoulder pain before and did not advise the officers of any pre-existing condition during the struggle and apprehension. From the precinct, he was taken to the hospital. Sgt. Mullen did not observe any injuries on § 87(2)(b).

After the incident, Sgt. Mullen went to § 87(2)(b) for treatment for his wrist. He signed a medical release form regarding this hospital treatment.

Sgt. Mullen stated that he did not scratch § 87(2)(b)’s neck or back. He did not know how § 87(2)(b) might have sustained scratches on his neck. He denied punching § 87(2)(b) at any time. He denied pushing § 87(2)(b) into the walls of the stairwell. He denied telling § 87(2)(b) to “shut the fuck up.” He added that PO Kelly did not speak discourteously either.

#### **PO Edward Griffith**

PO Edward Griffith was interviewed at the CCRB on May 7, 2003. [encl. 17]

On May 23, 2002, PO Edward Griffith worked a 1500X2335 tour. He was in uniform and worked with PO Marino. They were assigned to sector MNP.

PO Griffith remembered responding to a 10-85 for § 87(2)(b) around 7:45 p.m. on May 23, 2002. By the time he and his partner arrived, the 10-85 had been called off. PO Griffith remembered that a lieutenant was on the scene. He observed Sgt. Mullen and PO Kelly bring a handcuffed § 87(2)(b) out of the apartment building and place him in a patrol car. Sgt. Mullen and PO Kelly were holding onto § 87(2)(b)’s arms, but they did not appear to be pulling or dragging § 87(2)(b). PO Griffith did not observe anything unusual in the way these officers accompanied § 87(2)(b) out of the building. PO Griffith did not recall overhearing any conversation between § 87(2)(b) and the arresting officers. To his knowledge, Sgt. Mullen and PO Kelly did not use discourteous language toward § 87(2)(b). He did not observe § 87(2)(b) resisting the officers. He did not hear § 87(2)(b) complain about any injuries. He did not recall § 87(2)(b) asking him to loosen his handcuffs. PO Griffith did not observe any injuries on § 87(2)(b).

PO Griffith did not recall interacting with § 87(2)(b) in any way. PO Griffith remembered that other residents of the apartment were outside, observing, but it was not necessary to employ any crowd control tactics. He estimated that he spent between four and five minutes at the location “standing around.” He

remembered that the small boy the social worker had come to remove ran down the street, but he was found and brought to foster care. PO Griffith did not recall seeing § 87(2)(b)'s teenage son.

PO Griffith was asked if he recalled a female officer responding to the location; he did not. He did not recall if either of the arresting officers sustained injuries while apprehending § 87(2)(b).

#### **Ambulance Call Report**

The Ambulance Call Report (ACR) was prepared on § 87(2)(b). [encl. 18] The chief complaint section indicated that § 87(2)(b) complained of pain to his hands. The ACR indicated that § 87(2)(b) sustained cuts and bruises to his wrists. § 87(2)(b) was transported to § 87(2)(b).

#### **Medical Records**

§ 87(2)(b) received medical treatment at § 87(2)(b) on § 87(2)(b). [encl. 18] The medical records indicated that § 87(2)(b) complained of pain to his wrists, but one of the attending physicians noted that there were no visible injuries and no trauma. Another attending physician noted superficial abrasions and contusions to his wrist. The medical records further indicated that § 87(2)(b) sustained contusions to his right shoulder.

#### **Sgt. Mullen**

Sgt. Mullen's medical records were requested, but not received by the CCRB.

#### **Court Action Summary**

§ 87(2)(b), § 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### **Sprint**

The sprint printout indicated that at 5:50pm, § 87(2)(b) called for a police escort in order to remove a child from an apartment. [enc. 20] At 5:52, § 87(2)(b) called back and added that the situation was possibly violent. Sector C [Sgt. Mullen and PO Kelly] responded to the location at 6:13pm and made one arrest.

#### **Command Log**

The command log indicated that § 87(2)(b) was arrested and charged § 87(2)(b) [encl. 23] His physical condition was noted as apparently normal.

#### **Line of Duty Injury Report**

§ 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### **Witness Statement-Injury to Member of the Service**

The witness statement was prepared by PO Kelly on May 23, 2002. [encl. 25] The details section is as follows: "Responded to a 10-10 child removal. Upon entering residence, homeowner became very irate



that the police were present. He began to curse at us, then went to push Officer Mullen. Officer Mullen and myself then attempted to arrest male homeowner. During arrest defendant did resist, while Mullen attempted to put on cuffs. Officer Mullen did receive bruises, cuts and pain to his wrist.”

#### **Notice of Claim**

§ 87(2)(b) filed a notice of claim, which was received by the City of New York’s Comptroller’s Office on § 87(2)(b). [encl. 27] There is no dollar amount indicated on the notice of claim. The items of damage are indicated as follows: “injury to neck; pain and injury to wrist [and] top of hands; loss of feeling and numbness to fingers; exacerbation of injury to right shoulder; loss of freedom; past, present and future hospital, medical and related expenses; interruption and disruption of daily chores, activities and lifestyle; malicious prosecution.”

#### **Prior Convictions**

§ 87(2)(b) [encl. 21]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

*Sgt. Mullen* [encl. 2]

Sgt. Mullen does not have any substantiated allegations on his CCRB history.

*PO Kelly* [encl. 3]

PO Kelly does not have any substantiated allegations on his CCRB history.

### **Conclusions and Recommendations**

#### ***Credibility***

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) a neighbor of § 87(2)(b)

§ 87(2)(b) for the portion of the incident that he did witness, he did not see any officer strike § 87(2)(b) nor did he hear any officer use profanity. § 87(2)(b) only saw an officer place his knee on § 87(2)(b)’s back while § 87(2)(b) was being handcuffed. Additionally, § 87(2)(b) did not see Sgt. Mullen re-tighten § 87(2)(b)’s handcuffs, nor did he hear § 87(2)(b) complain of the tightness of the handcuffs. However, § 87(2)(b) did see § 87(2)(b) resisting the officers’ attempt to handcuff him. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

**Allegation A) Abuse of Authority: Sgt. Brian Mullen entered § 87(2)(b) apartment § 87(2)(b)**

**Allegation B) Abuse of Authority: PO Robert Kelly entered § 87(2)(b) apartment § 87(2)(b)**  
§ 87(2)(b) allowed § 87(2)(b) entry into his apartment. However, he refused to allow Sgt. Mullen and PO Kelly entry. § 87(2)(b) did not offer any explanation of why he did not want the officers to enter his apartment. In this case, § 87(2)(b) had a court order to remove a child from § 87(2)(b)’s apartment and he called for the police to respond. Both the officers and § 87(2)(b) stated that it is standard procedure for the police to escort a social worker conducting a child removal because of the potential for violence. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

The officers were

not executing the court order; § 87(2)(b) was. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation C) Discourtesy: PO Robert Kelly spoke obscenely and/or rudely to** § 87(2)(b)

**Allegation D) Discourtesy: Sgt. Brian Mullen spoke obscenely and/or rudely to** § 87(2)(b)

§ 87(2)(b) alleged that PO Kelly and Sgt. Mullen used the word “fuck” during this incident. That did not happen. § 87(2)(b) an independent witness, stated that the officers did not use any profanity at any point during this incident. Specifically, when § 87(2)(b) was asked if the officers used any profanity, he resolutely responded, “No way, never. I can swear any time...If there was anybody who was really out of tune, it was § 87(2)(b). Never.” § 87(2)(b) said of PO Kelly and Sgt. Mullen, “The officers were exceptional. They were very professional. There was no misconduct. There was no profanity used by them...They were very good.” § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation E) Force: Sgt. Brian Mullen used physical force against** § 87(2)(b)

**Allegation F) Force: PO Robert Kelly used physical force against** § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Mullen and PO Kelly used excessive force against him. It is a fact that force was indeed used against § 87(2)(b) § 87(2)(b), § 87(2)(g)

According to § 87(2)(b)'s version of events, Sgt. Mullen, who was unprovoked, pushed him backwards approximately six feet. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) accused the officers of throwing him to the ground and punching him in the back of the neck. § 87(2)(b) did end up on the ground, but so did the officers. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that once he was on the ground, he was cooperative and voluntarily placed his hands behind his back. That differs dramatically from the officers' and § 87(2)(b)'s statements. The officers stated that § 87(2)(b) put up a struggle and refused to be handcuffed. § 87(2)(b) stated that § 87(2)(b) was “fighting like a bull.” When asked if § 87(2)(b) calmed down after he was handcuffed, § 87(2)(b) responded, “Oh, Lord have mercy. No he did not.” § 87(2)(b) cursed at the officers and said, “I’m going to get you. I’ll get you. I’ll sue you.” § 87(2)(b) also claimed that the officers slammed him against the walls and the lobby door when they were escorting him out of the building. § 87(2)(b) who was walking directly behind the officers and § 87(2)(b) had a clear view and did not see the officers slam § 87(2)(b) against anything. § 87(2)(b), § 87(2)(g)

Based on the above, it is recommended that allegations E and F be exonerated.

**Allegation G) Force: Sgt. Brian Mullen tightly handcuffed** § 87(2)(b)

§ 87(2)(b) alleged that Sgt. Mullen re-tightened his handcuffs once he complained that they were too tight. The evidence suggests that the re-tightening of § 87(2)(b)'s handcuffs did not occur. The medical records do indicate that § 87(2)(b) did receive contusions to his wrists. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) an independent witness, stated that at no point did

Sgt. Mullen re-tighten § 87(2)(b) s handcuffs. As stated above, § 87(2)(b) opinion of the officers' actions during this incident was, "The officers were exceptional. They were very professional. There was no misconduct...They were very good." § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: